

Procedural Safeguards Available to Parents of Students With Disabilities



*Office of Special Education and
Early Intervention Services*

March, 2003

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PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF STUDENTS WITH DISABILITIES

Introduction

This document provides parents of students with disabilities, from birth through age 26, an overview of their educational rights with respect to special education. This document incorporates all procedural safeguards to parents and students with disabilities afforded under the Individuals with Disabilities Education Act (IDEA) and the IDEA implementing regulations.

Procedural Safeguards' Notice

A Procedural Safeguards' Notice shall be provided to parents on:

1. An initial referral for evaluation.
2. Each notification of an individualized education program team (IEP Team) meeting.
3. Reevaluation of the student.
4. Registration of a due process hearing.
5. The day on which the decision to take disciplinary action involving a change in placement is made.

Parent Consent

“Consent” means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; (b) the parent understands and agrees, in writing, to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. However, if a parent revokes consent, that revocation is not retroactive.

Parent consent is not required before reviewing existing data as part of an evaluation or reevaluation or when administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

The public agency must obtain informed parental consent before conducting a preplacement evaluation, any reevaluation, or initially placing a student with disabilities in a program providing special education and related services. Consent for initial evaluation may not be construed as consent for initial placement. If a parent fails to respond to a request for a reevaluation, the public agency may conduct a reevaluation if it can demonstrate that reasonable measures to obtain parental consent have been taken.

To conduct an initial evaluation, the district must seek parental consent and provide notice which includes the following:

1. The reason(s) and nature for an evaluation.

2. A description of the types of special education programs and services available within the intermediate school district (ISD).

Limitation

A public agency may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the public agency, except as required by the IDEA.

Prior Notice to Parents

The public agency must provide prior written notice to the parents of a child with disabilities each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student.

The notice must include:

1. A full explanation of all of the procedural safeguards available to the parent under Part B of the IDEA.
2. A description of where a parent can obtain a copy of the procedural safeguards' document.
3. A description of the action proposed or refused by the public agency, an explanation of why the public agency proposes or refuses to take action, and a description of any options the public agency considered and the reasons why those options were rejected.
4. A description of each evaluation procedure, test, record, or report the public agency uses as a basis for the proposal or refusal.
5. A description of any other factors which are relevant to the public agency's proposal or refusal.
6. A list of sources that the parent may contact to obtain assistance in understanding the content of the prior notice.

The notice must be written in language understandable to the general public, and be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency shall have the notice translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. The public agency must maintain written evidence that these requirements have been met.

Parent Involvement

Each public agency shall provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education.

Meeting

A public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are given the opportunity to participate. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Each public agency shall ensure that the parents of each student with disability are members of any group that makes decisions on the educational placement of their child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation. An initial placement may not be made without the consent of a parent. However, other placement decisions may be made by a group without the involvement of the parent(s) if the public agency is unable to obtain the parent's participation in the decision. The public agency must have a record of its attempt to ensure the parent(s) involvement.

The public agency shall make reasonable efforts to ensure that the parent understands and is able to participate in any group discussion relating to the educational placement of his or her child, including arranging for an interpreter for the parent with deafness or whose native language is other than English.

Evaluation Procedures

"Evaluation" means procedures used in accordance with 34 C.F.R. §§300.530 to 300.536. An evaluation will determine whether a student is a student with a disability, the nature and extent of the special education and related services that the student needs, and provide information relating to the student's involvement and progress in the general curriculum. Preschool children must also be assessed to determine participation in appropriate activities. The term also means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

The parent has the right to:

1. Have an interpreter/translator present if the primary language is not English or if the student is deaf/hearing impaired or visually impaired, unless it is clearly not feasible to do so.
2. Be assured that testing does not discriminate on the basis of race, language, or cultural background.
3. Be assured that materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education rather than measuring the student's English language skills.
4. Have evaluation instruments validated for the specific purpose(s) for which they were intended and administered by trained personnel in conformance with the instructions provided by their producer.
5. Have the student assessed in all areas of suspected disability using instruments that assess specific areas of educational need and do not produce merely a single intelligent quotient score.

No single procedure is to be used as the sole criterion for determining an appropriate special education program for the student.

6. Be assured that if a test is administered to a student with impaired sensory, physical, or speaking skills, the test results accurately reflect what the test intends to measure rather than the student's disability.
7. Have the initial evaluation made by a multidisciplinary evaluation team (MET) which includes a teacher or person knowledgeable in the area of the suspected disability.
8. Be assured that the student is assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, behavioral factors, general intelligence, academic performance, communicative status, and motor ability.
9. Have an evaluation that is sufficiently comprehensive to identify all of the student's special education and related services' needs, whether or not commonly linked to the disability category in which the student has been classified.
10. Provide the MET with information about the student's suspected disability, along with any evaluation the parent may have obtained for the student.
11. Be assured that a variety of assessment tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent and information related to enabling the student to be involved in and progress in the general curriculum.
12. Have an initial evaluation conducted by a MET and convene an IEP meeting within 30 school days after the school has received the written permission to evaluate. This timeline may be extended by agreement between the parents and the agency.
13. Expect a reevaluation every three years.
14. Request reevaluations more frequently than three years if it appears appropriate.
15. Be notified of each evaluation procedure, test, record, or report the IEP Team used in determining eligibility and the need for special education programs or services.

Independent Educational Evaluation

An "independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. An "IEE at public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

The parent of a student with a disability or suspected disability has the right to obtain an IEE of the child. A parent has the right to an IEE at public expense if the parent disagrees with any evaluation obtained by the public agency. However, the public agency may initiate a due process hearing to show that its evaluation is appropriate. The public agency shall respond, in writing, to the parents request for an IEE within 7 calendar days of the parents written request. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at

public expense. If the parent obtains an IEE at his/her own expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of a FAPE to the student, and may be presented as evidence at a due process hearing regarding the student.

If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense. Each public agency shall provide to the parent, on request, information about where an IEE may be obtained. When an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the public agency uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an IEE.

Mediation

Mediation is available to all parties whenever a dispute arises with respect to special education, including but not limited to when a hearing is requested or when a complaint is made. The IDEA mediation requirements are:

1. Mediation is free and voluntary, including costs of meeting to encourage mediation.
2. Mediation cannot be used to deny a parent's right to a due process hearing.
3. Mediation must be conducted by a qualified and impartial mediator.
4. The state must maintain a list of individuals who are qualified mediators and knowledgeable about the laws and regulations on special education.
5. Mediation shall be scheduled in a timely manner in a convenient location.
6. Both parties must agree with the selection of the mediator.
7. An agreement reached by the parties must be set forth in a written mediation agreement.
8. Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings.
9. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

Impartiality of Mediator

An individual who serves as a mediator:

1. May not be an employee of any local educational agency or any state agency.
2. May not be an employee of a state educational agency that is providing direct services to a student who is the subject of the mediation process and,
6. Must not have a personal or professional conflict of interest.

Impartial Due Process Hearing

A parent or a public agency may initiate a hearing regarding the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. When a due process hearing is initiated, the public agency shall inform the parent of the availability of mediation.

A parent must give notice to the public agency, as appropriate, when filing a request for a due process hearing. The notice request must contain the following information:

1. The name of the student, address of residence of the student, and the name of the school the student attends.
2. A description of the nature of the problem, including related facts.
3. A proposed resolution of the problem to the extent known and available to the parent at that time.

A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice.

This notice must remain confidential.

A model form is available at the ISD to assist the parent in filing due process hearing requests.

A hearing will be conducted by the public agency directly responsible for the education of the student.

The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the public agency initiates a due process hearing.

A due process hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the student, or by any person having a personal or professional interest which would conflict with his or her objectivity in the due process hearing. A person who otherwise qualifies to conduct a due process hearing is not an employee of the public agency solely because he or she is paid by the public agency to serve as a hearing officer.

Each public agency shall keep a current list of persons who serve as hearing officers; this list is developed and distributed by the Michigan Department of Education (MDE). This list shall be provided to the parent upon any request for a hearing. The list must include a statement of the qualifications of each of those persons.

The public agency shall ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

The decision made in a due process hearing is final, unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal described below.

Due Process Hearing Rights

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. Prohibit the introduction of any evidence, including evaluations and recommendations based on those evaluations that has not been disclosed to that party at least five business days before the hearing.
4. Obtain a written or, at the option of the parent, an electronic, verbatim record of the hearing.
5. Obtain written or, at the option of the parent, an electronic findings of fact and decisions at no cost to the parent. After deleting any personally identifiable information, the public agency shall transmit those findings and decisions to the state advisory panel and make them available to the public.

A parent involved in hearings must be given the right to have the student who is the subject of the hearing present and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to the parent and student involved.

Administrative Appeal: Impartial Review

Any party aggrieved by the findings and decision in the hearing may appeal to the MDE within 25 days. If there is an appeal, the MDE shall conduct an impartial review of the hearing not later than 30 calendar days after the receipt of a request for a review. The official conducting the review shall:

1. Examine the entire hearing record.
2. Ensure that the procedures at the hearing were consistent with the requirements of due process.
3. Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply.
4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.
5. Make an independent decision on completion of the review.
6. Give a copy of written or, at the option of the parent, electronic findings of fact and the decision to the parties.
7. Conduct reviews involving oral arguments at a time and place which is reasonably convenient to the parent and student involved.
8. A hearing officer may grant specific extensions of time at the request of either party.

Civil Action

Any party aggrieved by the findings and decision made in an administrative review has the right to bring a civil action in state or federal court.

Student's Status During Proceedings

During the pendency of any administrative hearing or judicial proceeding, the student involved in the hearing must remain in his or her present educational placement unless the public agency and the parent of the student agree otherwise. Any IEP after the initial IEP will go into effect unless the parent disagrees and requests a due process hearing.

If the decision of a hearing officer in a due process hearing or an appeal agrees with the student's parent that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parent.

If the hearing involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school program until the completion of all the proceedings.

Subsequent to a disciplinary action taken by the public agency, a parent may request a hearing to challenge an interim alternative educational setting. The student shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the student's assignment to the interim setting.

If a parent chooses to challenge a proposed change in placement (after the expiration of an interim alternative placement), the student shall remain in the current placement (the placement prior to the interim alternative educational setting). A student shall remain in this placement during the hearing process unless a hearing officer orders another placement.

Award of Attorneys' Fees

A court may award attorneys' fees to the parent of a student with a disability who prevails in court or a due process hearing. The fees must be consistent with those for similar legal services in the community.

In hearings and in court, reimbursement of attorneys' fees and related costs are prohibited if:

1. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience.
2. The district makes a written offer of settlement more than ten days before the proceeding begins; and
3. The offer is not accepted within ten days; and
4. The relief granted to the parent in a hearing or by the court is not more favorable than the offer of settlement.

If the court finds that the parent was substantially justified in rejecting a settlement offer and the parent prevails in the hearing or court case, then attorneys' fees may be awarded.

The court may reduce attorneys' fees if it finds that:

1. The parent has unreasonably delayed the final resolution of the controversy; or
2. The attorneys' fees exceed the prevailing hourly rate in the community for similar services; or
3. The time spent and legal services furnished were excessive considering the nature of the case; or
4. The attorney representing the parent did not provide the public agency with the appropriate information in a due process hearing.

The reduction of attorneys' fees listed above do not apply if the court finds that the state or school district:

1. Unreasonably delayed the final resolution of the dispute; or
2. Otherwise violated the procedural safeguards of the parent.

Attorneys' fees will not be awarded to the parent for any meeting of the IEP Team unless:

1. The meeting is directed by the court or by an administrative proceeding; or
2. At the discretion of the state, the meeting is for mediation conducted prior to the filing for a request for a due process hearing.

Discipline

Removals That Are Not A Change of Placement

School personnel may order a removal of a student with a disability, just as it would for students who are nondisabled, for not more than ten school days for violations of school rules. Additional separate removals are permissible for ten school days, or less, in the same school year for incidents of misconduct as long as these removals do not constitute a change of placement.

Change of Placement

A change of placement occurs if a pattern of removals accumulate to more than ten school days in a school year. Factors in determining a pattern may include the length of each removal, the total amount of time removed, and the proximity of the removals to each other (see General Change of Placement below).

After ten **accumulated** school days of removals in a school year, the school must provide services that allow the student to progress in the general curriculum, as well as advance in the goals of the IEP. The services are determined by the school personnel in consultation with the student's special education teacher.

Interim Alternative Setting

Any interim alternative educational setting must be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP.

Functional Assessment and Behavior Intervention Plan

Not later than 10 business days after first removing the student for the 11th accumulated school day in a school year, the school must do the following:

1. If the school district has not already conducted a functional behavioral assessment and implemented a behavior implementation plan, the IEP Team shall meet to develop an assessment plan to address the problem behavior. The assessment plan shall be conducted as soon as practical and be presented at an IEP Team meeting to determine an appropriate behavioral intervention plan to address the behavior.
2. If the student already has a behavioral intervention plan, the IEP Team shall meet to review the plan and modify it, as necessary, to address the problem behavior.
3. If the student is subject to further removals during the school year, the school shall contact the IEP Team to determine if another IEP Team meeting is needed to review the plan. If any member of the IEP Team requests a review, the IEP Team shall meet to review the behavior intervention plan.

General Change of Placement

For the purposes of this document, a general change of placement is:

1. A pattern of removals that are a change of placement as described above.
2. A single removal longer than ten consecutive school days (except for removals under Change of Placement: Drugs and Dangerous Weapons or Change of Placement: Other Dangerous Situations described in following sections).

For removals that are a general change in placement, all of the following must occur:

1. On the day on which the decision is made to remove the student, the parent shall be notified of the decision and of all procedural safeguards.
2. **Manifestation determination review.** Immediately, but not later than ten school days after the day on which the decision is made to remove the student, an IEP Team must meet to determine the relationship between the student's disability and the behavior subject to discipline. All relevant information must be considered, including:
 - a. evaluation and diagnostic results, including such results or other relevant information supplied by the parent of the student; and
 - b. observations of the student; and
 - c. the student's IEP and placement.

It may be determined that the behavior was not a manifestation of the disability only if the IEP Team and other qualified personnel in a meeting determine that all of the following are true:

- a. in relation to the behavior subject to disciplinary action, the IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the IEP and placement; or
 - b. the student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to discipline; or
 - c. the student's disability did not impair the ability of the student to control the behavior subject to discipline.
3. For a general change of placement, within ten business days from the day on which the decision is made to remove the student, the IEP Team must also develop or review, as appropriate, a behavior intervention plan (see Functional Assessment and Behavior Intervention Plan #1. through #3.).
 4. If the IEP Team and other qualified personnel in a meeting determine that the behavior subject to discipline was not a manifestation of the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied in the same manner to the student, except that programs and/or services must be continued as determined by the IEP Team. The programs and services shall allow the student to progress in the general curriculum and advance in the goals of the IEP.
 5. If the IEP Team and other qualified personnel in a meeting determine that the behavior subject to discipline is a manifestation of the disability, then the removal is terminated and the IEP Team must take immediate steps to remedy any deficiencies in the IEP or placement found during the manifestation determination review.
 6. If the student's parent disagrees with the determination that the student's behavior was not a manifestation of the disability, the parent may request an expedited hearing from the MDE. During the appeal, the student's placement is in the setting given in the last uncontested IEP.

Change of Placement: Drugs and Dangerous Weapons

A change in placement for a student with a disability to another educational setting may be made by school personnel for the same amount of time that a student without a disability would be subject to discipline, but not more than 45 calendar days if the student possesses, uses, sells, or solicits illegal drugs, or possesses or carries a weapon to school or a school function.

An illegal drug means a controlled substance, but does not include a substance that is legally possessed by the student or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority or other provision of federal law.

A dangerous weapon is defined as a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than two and one-half inches in length.

For removals involving drugs or weapons, all of the following must occur:

1. On the day on which the decision is made to remove the student because of violations involving weapons or drugs, the parent shall be notified of the decision and of all procedural safeguards.

2. A manifestation determination review must be conducted (see General Change of Placement, #2. Manifestation Determination Review).
3. The IEP Team must develop or review, as appropriate, a behavior intervention plan (see Functional Assessment and Behavior Intervention Plan, #1. through #3.).
4. Programs and services and the interim alternative educational setting are subsequently determined by the IEP Team. The IEP Team must determine what programs/services or modifications are needed to maintain progress in the general curriculum, progress toward IEP goals, and to help prevent recurrence of the behavior subject to discipline.
5. If the behavior subject to discipline is not a manifestation of the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student with a disability, except for continued services described in #4. above.
6. If the IEP Team determines that the behavior subject to discipline is a manifestation of the disability, the removal (up to 45 calendar days) may be completed. The IEP Team must take immediate steps to remedy any deficiencies in the IEP or placement found during the manifestation determination review. Programs and services must be provided to the student as in #4. above.
7. If the parent requests a hearing regarding disciplinary actions for drugs or weapons to challenge the interim alternative educational setting and/or the manifestation determination, the student shall remain in the interim alternative educational setting for up to 45 calendar days as assigned.
8. At the end of the period of removal, the student returns to the placement in effect prior to the interim alternative setting. If the school proposes to change the student's placement after the expiration of the long-term removal for drugs or weapons, and if the parent appeals such a placement, the pendent placement during the appeal is the placement in effect prior to the interim alternative setting.

If school personnel maintain that it is dangerous for the student to return to the placement that was in effect prior to the interim alternative educational setting, the school may request an expedited hearing or seek a court decision. The parent and school may also agree to an extended interim placement.

Change of Placement: Other Dangerous Situations

In changes of placement not involving weapons or drugs, the student may be assigned to an interim alternative educational setting (not to exceed 45 calendar days) if either a hearing officer or court:

1. Determines that the school has demonstrated substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
2. Considers the appropriateness of the current placement; and
3. Considers whether the school has made reasonable efforts to minimize the risk of harm in the current placement, including the use of supplementary aids and services; and
4. Determines that a proposed interim alternative educational placement will meet the standards given in #4. below.

If school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the public agency may request an expedited due process hearing.

In discipline procedures involving an order from a court or hearing officer, all of the following must occur:

1. On the day on which the decision is made to remove the student, the parent shall be notified of the decision and of all procedural safeguards.
2. A manifestation determination review must be conducted (**see General Change of Placement, #2. Manifestation Determination Review**). Regardless of the outcome of that determination, the removal must be completed as ordered, and the IEP Team must take immediate steps to remedy deficiencies (if any) found in the IEP or placement during the manifestation determination review.
3. Within ten business days from the day on which the decision is made to remove the student, the IEP Team must develop or review, as appropriate, a behavior intervention plan (**see Functional Assessment and Behavior Intervention Plan, #1. through #3.**).
4. Programs and services in the interim alternative educational setting are determined by a court or hearing officer in response to proposals by school personnel. The proposal must determine what programs and services or modifications are needed to maintain progress in the general curriculum, progress toward IEP goals, and to help prevent recurrence of the behavior subject to discipline.

Protections for Students Not Yet Eligible for Special Education and Related Services

A student who has not been determined to be eligible for special education and who has engaged in behavior subject to discipline procedures may assert any of the protections in these procedural safeguards if the public agency had knowledge that the student was a student with a disability before the disciplinary action occurred.

The school shall be deemed to have prior knowledge that the student is a student with a disability if:

1. The parent has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the student is in need of special education and related services.
2. The behavior or performance of the student demonstrates the need for these services in accordance with a disability as defined in the Revised Administrative Rules for Special Education (Rules).
3. The teacher of the student, or other personnel of the school, has expressed concern about the behavior or performance of the student to the director of special education or other personnel in accordance with the school's established Child Find or special education referral system.
4. The parent of a student has requested an evaluation for special education.

The school would not be deemed to have prior knowledge of a disability if, as a result of receiving information as listed immediately above, the school:

1. Conducted an evaluation; and

2. Found the student to be ineligible for special education; and
3. Provided notice to the parent of this determination.

If a request for an evaluation is made during the time period in which the student is subjected to disciplinary procedures:

1. The evaluation must be completed in an expedited manner.
2. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which may include removal and expulsion without educational services.
3. If the student is found to be a student with a disability, the school shall provide special education and related services.

If the school, according to the provisions of this section, does not have knowledge prior to taking disciplinary actions against the student, the student may be subject to the same disciplinary measures as applied to students without disabilities who engaged in comparable behaviors.

A flow chart describing the discipline procedures is available on the Michigan Department of Education (MDE) website at www.michigan.gov/mde. The document is titled Special Education Consideration in Student Discipline Procedures, March 6, 2002.

Students Enrolled in Private Schools

A public agency may not be required to pay for the cost of education (including special education and related services) if:

1. The parent does not inform the IEP Team before removing his or her child from the public school that he or she is rejecting the proposed placement of the IEP Team;
2. The parent does not make the student available for evaluation; or
3. The action is determined to be “unreasonable” by the judicial system.

The parent must inform the IEP Team, in writing, of his or her concerns and intent to enroll his or her child in a private school at public expense. This notice must be received by the public agency ten business days prior to the removal of the student and enrollment in a private school.

Transfer of Parental Rights at Age of Majority

When a student with a disability reaches the age of majority (age 18 in Michigan if a legal guardian has not been appointed by the court), the public agency shall provide notice to both the student and the parent that all rights accorded to the parent transfer to the student. All rights accorded to the parent transfer to students who have reached the age of majority and who are incarcerated in an adult or juvenile federal, state, or local correctional institution.

Surrogate Parents

Each public agency shall assign an individual to act as a surrogate for the parent to protect the education rights of a student when:

1. No parent can be identified.
2. The public agency, after reasonable efforts, cannot discover the whereabouts of a parent.
3. The student is a ward of the state under the laws of the state.

The method for determining whether a student needs a surrogate for the parent and for assigning a surrogate for the parent to a student is the responsibility of the public agency. The Policy for the Appointment of Surrogate Parents is available on the MDE website at www.michigan.gov/mde.

Public agencies appointing a surrogate for the parent to a student ensures that the person:

1. Has no interest that conflicts with the interests of the student that he/she represents.
2. Has knowledge and skills to adequately represent the student.
3. Is not an employee of the public agency which is involved in the education or care of the student.
4. A person who otherwise qualifies to be a surrogate parent is not an employee of the public agency solely because he or she is paid by the public agency to serve as a surrogate parent.

The surrogate for the parent may represent the student in all matters relating to:

1. The identification, evaluation, and educational placement of the student.
2. The provision of a FAPE to the student.

Access to Records

Each public agency shall permit the parent to inspect and review all records relating to his or her child with respect to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student, which are collected, maintained, or used by the public agency under this part. The public agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 days after the request has been made. A parent requesting records for use at an IEP Team meeting, a hearing, or an appeal shall be given access to the requested records immediately.

The right to inspect and review educational records under this section includes:

1. The right to a response from the participating public agency to reasonable requests for explanations and interpretations of the records.
2. The right to have a representative of the parent inspect and review the records.
3. The right to request that the public agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

A public agency may presume that the parent has authority to inspect and review records relating to his or her child unless the public agency has been advised that the parent doesn't have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any educational record includes information on more than one student, the parents of each of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information. Each public agency shall provide parents, on request, a list of the types and locations of educational records collected, maintained, or used by the public agency.

Fees for Searching, Retrieving, and Copying Records

A participating public agency may not charge a fee to search for or to retrieve information from the student's educational record. A public agency may charge a fee for copies of records which are made for the parent if the fee does not effectively prevent the parent from exercising his or her right to inspect and review those records.

Record of Access

Each public agency shall keep a record of parties obtaining access to educational records collected or maintained, except access by the parent and authorized employees of the participating public agency. Records of access shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Amendment of Records at Parent's Request

A parent who believes that information in educational records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of his or her child, may request the participating public agency which maintains the information to amend the information.

The public agency shall decide whether to amend the information in accordance with the request within a reasonable period of time upon receipt of the request. If the public agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR §300.568.

The public agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

If, as a result of the hearing, the public agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent of the right to place in the educational records maintained on the student, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency. Any explanation placed in the records of the student under this section must be

maintained by the public agency as part of the records of the student as long as the record or contested portion is maintained by the public agency. If the records of the student or the contested portion are disclosed by the public agency to any party, the explanation must also be disclosed to the party.

Confidentiality

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using this information. Parental consent need not be obtained if the information is to be used to meet a requirement under the IDEA. An educational agency subject to the Family Educational Rights and Privacy Act (FERPA) may not release information from education records to participating agencies without parental consent unless authorized to do so under the FERPA.

Destruction of Information

The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the student.

The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

Complaints

“Complaint” means a written and signed allegation that includes the facts on which the allegation is based, by an individual or an organization, that there is a violation of any of the following:

1. Any current provision of the Rules.
2. 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services.
3. The IDEA of 1997, 20 U.S.C., Chapter 33, §1400 et seq., and the regulations implementing the Act, 34 C.F.R. Part 300.
4. An ISD plan.
5. An IEP Team report, hearing officer decision, or court decision regarding special education programs or services.
6. The state application for federal funds under the IDEA.

Should the parent suspect a violation, the parent should contact the ISD’s director of special education or the superintendent’s designee. This person may attempt to resolve the concerns informally, but the parent must be told of his/her right to file a formal complaint. The parent must also be given a copy of the Rules dealing with complaints (Part 8 of the Rules) and a copy of the Complaint Procedures for Special Education. The complainant may request assistance in writing a formal complaint.

If the parent files a formal complaint, the ISD must investigate the complaint and give the parent a copy of the findings within 21 calendar days. If, after reviewing the public agency's report, the parent disagrees with the findings, the parent may appeal to the MDE. If the ISD does not act in a timely manner to investigate the parent's concerns, the parent may request the MDE to investigate the concerns. A written report shall be completed within 60 calendar days from the ISD's or the MDE's receipt of the complaint, unless the time line is extended for exceptional circumstances relative to the complaint. A denial of an extension request is final.

Rule of Construction

Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.